

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

THOMPSON HOSPITALITY, LLC¹

Employer

and

Case 10-RC-15368

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 1996, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record of this case,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Name of the Employer appears as amended at the hearing.

² The Employer and the Petitioner elected not to file post-hearing briefs.

2. The Employer is a Virginia corporation with an office and place of business located at Savannah State University, (hereinafter the University) in Savannah, Georgia, where it is engaged in providing food and catering services to the University. During the past twelve months, the Employer has purchased and received products, goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Georgia for use at its Savannah, Georgia operations. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner claims to represent certain employees of the Employer. It is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The agreed upon unit consists of approximately 40 employees providing food services at the University. The University's spring semester will end May 9 at which time all but 9-10 of the Employer's food service employees will be temporarily laid off. These 9-10 employees will remain during the May 9-11 graduation weekend. The University is closed from May 11-19, during which time no employees are working. When the University's summer session begins about May 19, the Employer will employ about 15 employees until summer school ends on July 2. From July 2 to the first week in August, the Employer's food service operations are again scaled back and less than 15 employees will

be retained for that four week period. When the University's fall semester begins the first week in August, all food service employees will be recalled and the Employer will again have its full complement of 40 employees.

The Employer and the Petitioner request a mail ballot election, presumably because not all 40 employees will be at work when the election takes place. The Board has a long standing preference for manual election and the burden is on the party requesting a mail ballot election to show that a manual election would be an abuse of discretion. San Diego Gas & Electric, 325 NLRB 1143 (1998). Neither party has met that burden. This is not a situation where working employees are shown to be geographically scattered because of their job duties or work schedules; nor is there a strike, picketing or lockout in progress at the University. The Employer, from May 19 on, will have a continual presence at the University with as much as 35% of its workforce remaining employed at a time that an election is most likely to take place. There is no evidence that eligible voters, currently on temporary lay-off, will not be able to come into their place of employment and cast a ballot. Indeed, experience has shown that there is greater voter turnout for manual elections than mail ballot elections. Thus, the instant circumstance is no different than the myriad other Board elections where laid off voters have returned to their place of employment to vote. Accordingly, no unusual circumstances have been shown to rebut the presumptive appropriateness of a manual election. San Diego Gas & Electric, supra.

In view of the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time food-service employees, kitchen-aid employees, grill cooks, cooks, caterers, line servers, utility workers, salad-preparation employees, cashiers, bakers, snack-bar attendants, dishwashers, and deli workers, but excluding: professional employees, office/clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot manual election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers, Local 1996, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. To be timely filed, the list must be received in the **Regional Office, 233 Peachtree**

Street, NE, Harris Tower, Suite 1000, Atlanta, Georgia 30303 on or before May 14, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estopps employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, DC 20570.

This request for review must be received by the Board in Washington by 5:00 p.m. EST on **May 21, 2003**.

Dated at Atlanta, Georgia, this 7th day of May 2003.

/s/ Martin M. Arlook

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